

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

WAMC COMPANY, INC. Dba CAL
WEST ENTERPRISES,

Plaintiff,

v.

MIDWEST INS. CO.; ILLINOIS
MIDWEST INS. AGENCY, INC.;
STAR INS. CO.,

Defendant.

Civil No. 13CV2649-JM (BGS)

**NOTICE AND ORDER FOR
EARLY NEUTRAL
EVALUATION CONFERENCE**

IT IS HEREBY ORDERED that an Early Neutral Evaluation of your case will be held on **January 7, 2014**, at **9:30 a.m.** before United States Magistrate Judge Bernard G. Skomal, United States District Court, 333 W. Broadway, Suite 1280, San Diego, California.

The following are mandatory guidelines for the parties preparing for the Early Neutral Evaluation Conference.

1. **Purpose of Conference:** The purpose of the Early Neutral Evaluation Conference (“ENE”) is to have an in-depth discussion of every aspect of the lawsuit in an effort to achieve an early resolution of the case. All conference discussions will be off the record, privileged and confidential. Counsel for any non-English speaking parties is responsible for arranging for the appearance of an

1 interpreter at the conference.

2 2. **Personal Appearance of Parties Is Required:** All parties,
3 adjusters for insured defendants, and other representatives of a party having full and
4 complete authority to enter into a binding settlement, and the principal attorneys
5 responsible for the litigation, must be present **in person** and *legally and factually*
6 prepared to discuss the case.

7 3. **Full Settlement Authority Required:** In addition to counsel who
8 will try the case, a party or party representative with full settlement authority¹ must
9 be present for the conference. The purpose of this requirement is to have
10 representatives present who can settle the case during the course of the conference
11 without consulting a superior. Counsel for a government entity may be excused
12 from this requirement so long as the government attorney who attends the ENE
13 conference (1) has primary responsibility for handling the case; and (2) may
14 negotiate settlement offers which the attorney is willing to recommend to the
15 government official having ultimate settlement authority.

16 Unless there are **extraordinary circumstances**, persons required to attend
17 the conference pursuant to this Order will not be excused from personal attendance.
18 In and of itself, having to travel a long distance to appear in person is not
19 “extraordinary.” Failure to appear at the ENE conference will be grounds for
20 sanctions.

21 4. **Confidential ENE Statements Required:** No later than **December**
22 **23, 2013**, the parties must submit confidential statements of seven pages or less to
23 _____

24 ¹ “Full authority to settle” means that the individuals at the settlement conference must be authorized to
25 fully explore settlement options and to agree at that time to any settlement terms acceptable to the parties.
26 Heileman Brewing Co., Inc. v. Joseph Oat Corp., 871 F.2d 648 (7th Cir. 1989). The person needs to have
27 “unfettered discretion and authority” to change the settlement position of a party. Pitman v. Brinker Intl.,
28 Inc., 216 F.R.D. 481, 485-486 (D. Ariz. 2003). The person must be able to bind the party without the need
to call others not present at the conference for authority or approval. The purpose of requiring a person
with unlimited settlement authority to attend the conference includes that the person’s view of the case
may be altered during the face to face conference. Id. at 486. A limited or a sum certain of authority is not
adequate. Nick v. Morgan’s Foods, Inc., 270 F.3d 590 (8th Cir. 2001).

1 Judge Skomal. Please also attach relevant exhibits. The statement must address the
 2 legal and factual issues in the case and should focus on issues most pertinent to
 3 settling the matter. The statement should not repeat facts and law contained in the
 4 Complaint or Answer. Statements do not need to be filed or served on opposing
 5 counsel. **ENE statements must be emailed to efile_Skomal@casd.uscourts.gov.**
 6 If the accompanying exhibits exceed 30 pages, a courtesy copy of the exhibits must
 7 also be delivered directly to chambers via courier.

8 5. **New Parties Must Be Notified by Plaintiff's Counsel:** Plaintiff's
 9 counsel shall give notice of the ENE to parties responding to the complaint after the
 10 date of this notice.

11 6. **Case Management Under the Amended Federal Rules:** In the
 12 event the case does not settle at the ENE, the parties can expect to leave the ENE
 13 with Rule 26 compliance dates or deadlines.

14 7. **Requests to Continue an ENE Conference:** Local Rule 16.1(c)
 15 requires that an ENE take place within 45 days of the filing of the first answer.
 16 Requests to continue ENEs are rarely granted. The Court will, however, consider
 17 formal motions to continue an ENE when extraordinary circumstances exist and the
 18 other party has no objection. If another party objects to the continuance, counsel
 19 for both parties must call chambers and discuss the matter with the research
 20 attorney/law clerk assigned to the case before any motion may be filed.

21 Absent extraordinary circumstances, requests for continuances will not be
 22 **considered *unless* filed no less than fourteen (14) days prior to the scheduled**
 23 **conference.**

24 8. **Settlement Prior to ENE Conference:** The Court encourages the
 25 parties to work on settling the matter in advance of the ENE Conference. In the
 26 event that the parties resolve the matter prior to the day of the conference, the
 27 following procedures must be followed before the Court will vacate the ENE and
 28 excuse the parties from appearing:

1 A. The parties may file a Joint Motion to Dismiss and submit a
2 proposed order to the assigned district judge. If a Joint Motion to Dismiss is filed,
3 the Court will immediately vacate the ENE;

4 B. If the parties settle more than 24 hours before the conference but
5 are not able to file a Joint Motion to Dismiss, they must file a Notice of Settlement
6 containing the electronic signatures of counsel for all settling parties and must also
7 identify a date by which the Joint Motion to Dismiss will be filed;

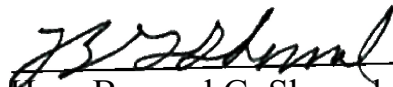
8 C. If the parties settle less than 24 hours before the conference,
9 counsel for the settling parties must JOINTLY call chambers and inform the Court
10 of the settlement and receive Court permission to not appear at the ENE.

11 Questions regarding this case or the mandatory guidelines set forth herein
12 may be directed to Judge Skomal's research attorney at (619) 557-2993. Please
13 consult Judge Skomal's rules, available on the Court's website, before contacting
14 chambers with your questions.

15 A Notice of Right to Consent to Trial Before a United States Magistrate
16 Judge is attached for your information.

17 IT IS SO ORDERED.

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19 DATED: November 19, 2013

20 
21 Hon. Bernard G. Skomal
22 U.S. Magistrate Judge
23 United States District Court
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**NOTICE OF RIGHT TO CONSENT TO TRIAL
BEFORE A UNITED STATES MAGISTRATE JUDGE**

In accordance with the provisions of 28 U.S.C. § 636(c), you are hereby notified that a U.S. Magistrate Judge of this district may, upon the consent of all parties on form 1a (available in the clerk's office), conduct any or all proceedings, including a jury or non-jury trial, and order the entry of a final judgment. Counsel for the plaintiff shall be responsible for obtaining the consent of all parties, should they desire to consent.

You should be aware that your decision to consent or not to consent is entirely voluntary and should be communicated solely to the Clerk of Court. Only if all parties consent will the Judge or Magistrate Judge to whom the case has been assigned be informed of your decision.

Judgments of the U.S. Magistrate Judges are appealable only to the U.S. Court of Appeals in accordance with this statute and the Federal Rules of Appellate Procedure.